

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 48

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO TRUSTS; ENACTING THE UNIFORM TRUST CODE; REPEALING
SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

Section 1-101. SHORT TITLE. -- This act may be cited as the
"Uniform Trust Code".

Section 1-102. SCOPE. -- The Uniform Trust Code applies to
express trusts, charitable or noncharitable, and trusts created
pursuant to a statute, judgment or decree that requires the
trust to be administered in the manner of an express trust.

Section 1-103. DEFINITIONS. -- As used in the Uniform Trust
Code:

A. "action", with respect to an act of a trustee,

1 includes a failure to act;

2 B. "beneficiary" means a person that:

3 (1) has a present or future beneficial
4 interest in a trust, vested or contingent; or

5 (2) in a capacity other than that of trustee,
6 holds a power of appointment over trust property;

7 C. "charitable trust" means a trust or portion of a
8 trust created for a charitable purpose described in Subsection
9 A of Section 4-405 of the Uniform Trust Code;

10 D. "conservator" means a person appointed by the
11 court to administer the estate of a minor or adult individual;

12 E. "environmental law" means a federal, state or
13 local law, rule, regulation or ordinance relating to protection
14 of the environment;

15 F. "guardian" means a person appointed by the court
16 or a parent to make decisions regarding the support, care,
17 education, health and welfare of a minor or adult person. The
18 term does not include a guardian ad litem;

19 G. "interests of the beneficiaries" means the
20 beneficial interests provided in the terms of the trust;

21 H. "jurisdiction", with respect to a geographic
22 area, includes a state or country;

23 I. "person" means an individual, corporation,
24 business trust, estate, trust, partnership, limited liability
25 company, association, joint venture, government, governmental

1 subdivision, agency or instrumentality, public corporation or
2 any other legal or commercial entity;

3 J. "power of withdrawal" means an exercisable
4 general power of appointment other than a power exercisable
5 only upon consent of the trustee or a person holding an adverse
6 interest;

7 K. "property" means anything that may be the
8 subject of ownership, whether real or personal, legal or
9 equitable, or any interest therein;

10 L. "qualified beneficiary" means a beneficiary who,
11 on the date the beneficiary's qualification is determined:

12 (1) is a distributee or permissible
13 distributee of trust income or principal;

14 (2) would be a distributee or permissible
15 distributee of trust income or principal if the interests of
16 the distributees described in Paragraph (1) of this subsection
17 terminated on that date; or

18 (3) would be a distributee or permissible
19 distributee of trust income or principal if the trust
20 terminated on that date;

21 M. "revocable", as applied to a trust, means
22 revocable by the settlor without the consent of the trustee or
23 a person holding an adverse interest;

24 N. "settlor" means a person, including a testator,
25 who creates or contributes property to a trust. If more than

1 one person creates or contributes property to a trust, each
2 person is a settlor of the portion of the trust property
3 attributable to that person's contribution, except to the
4 extent another person has the power to revoke or withdraw that
5 portion;

6 0. "spendthrift provision" means a term of a trust
7 that restrains both voluntary and involuntary transfer of a
8 beneficiary's interest;

9 P. "state" means a state of the United States, the
10 District of Columbia, Puerto Rico, the United States Virgin
11 Islands or any territory or insular possession subject to the
12 jurisdiction of the United States. The term includes an Indian
13 tribe or band recognized by federal law or formally
14 acknowledged by a state;

15 Q. "terms of a trust" means the manifestation of
16 the settlor's intent regarding a trust's provisions as
17 expressed in the trust instrument or as may be established by
18 other evidence that would be admissible in a judicial
19 proceeding;

20 R. "trust instrument" means an instrument executed
21 by the settlor that contains terms of the trust, including any
22 amendments thereto; and

23 S. "trustee" includes an original trustee, an
24 additional trustee, a successor trustee and a co-trustee.

25 Section 1-104. KNOWLEDGE. --

. 144858. 1

1 A. Subject to Subsection B of this section, a
2 person has knowledge of a fact if the person:

3 (1) has actual knowledge or should have
4 knowledge of it;

5 (2) has received a notice or notification of
6 it; or

7 (3) from all the facts and circumstances known
8 to the person at the time in question, has reason to know it.

9 B. An organization that conducts activities through
10 employees has notice or knowledge of a fact involving a trust
11 only from the time the information was received by an employee
12 having responsibility to act for the trust, or would have been
13 brought to the employee's attention if the organization had
14 exercised reasonable diligence. An organization exercises
15 reasonable diligence if it maintains reasonable routines for
16 communicating significant information to the employee having
17 responsibility to act for the trust and there is reasonable
18 compliance with the routines. Reasonable diligence does not
19 require an employee of the organization to communicate
20 information unless the communication is part of the employee's
21 regular duties or the employee knows that a matter involving
22 the trust would be materially affected by the information.

23 Section 1-105. DEFAULT AND MANDATORY RULES. --

24 A. Except as otherwise provided in the terms of the
25 trust, the Uniform Trust Code governs the duties and powers of

. 144858. 1

underscoring material = new
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1 a trustee, relations among trustees and the rights and
2 interests of a beneficiary.

3 B. The terms of a trust prevail over any provision
4 of the Uniform Trust Code except:

5 (1) the requirements for creating a trust;

6 (2) the duty of a trustee to act in good faith
7 and in accordance with the purposes of the trust;

8 (3) the requirement that a trust and its terms
9 be for the benefit of its beneficiaries and that the trust have
10 a purpose that is lawful, not contrary to public policy and
11 possible to achieve;

12 (4) the power of the court to modify or
13 terminate a trust under Sections 4-410 through 4-416 of the
14 Uniform Trust Code;

15 (5) the effect of a spendthrift provision and
16 the rights of certain creditors and assignees to reach a trust
17 as provided in Article 5 of the Uniform Trust Code;

18 (6) the power of the court under Section 7-702
19 of the Uniform Trust Code to require, dispense with or modify
20 or terminate a bond;

21 (7) the power of the court under Subsection B
22 of Section 7-708 of the Uniform Trust Code to adjust a
23 trustee's compensation specified in the terms of the trust that
24 is unreasonably low or high;

25 (8) except for a qualified beneficiary who has

1 not attained twenty-five years of age, the duty under
 2 Paragraphs (2) and (3) of Subsection B of Section 8-813 of the
 3 Uniform Trust Code to notify qualified beneficiaries of an
 4 irrevocable trust of the existence of the trust, of the
 5 identity of the trustee and of their right to request reports
 6 of the trustee;

7 (9) the duty under Subsection A of Section
 8 8-813 of the Uniform Trust Code to respond to the request of a
 9 beneficiary of an irrevocable trust for a trustee's reports and
 10 other information reasonably related to the administration of a
 11 trust;

12 (10) the effect of an exculpatory term under
 13 Section 10-1007 of the Uniform Trust Code;

14 (11) the rights under Sections 10-1008 through
 15 10-1012 of the Uniform Trust Code of a person other than a
 16 trustee or beneficiary;

17 (12) periods of limitation for commencing a
 18 judicial proceeding;

19 (13) the power of the court to take such
 20 action and exercise such jurisdiction as may be necessary in
 21 the interests of justice; and

22 (14) the subject-matter jurisdiction of the
 23 court and venue for commencing a proceeding as provided in
 24 Sections 2-203 and 2-204 of the Uniform Trust Code.

25 Section 1-106. COMMON LAW OF TRUSTS--PRINCIPLES OF

. 144858. 1

1 EQUITY. --The common law of trusts and principles of equity
2 supplement the Uniform Trust Code, except to the extent
3 modified by that code or another statute of this state.

4 Section 1-107. GOVERNING LAW. --The meaning and effect of
5 the terms of a trust are determined by:

6 A. the law of the jurisdiction designated in the
7 terms unless the designation of that jurisdiction's law is
8 contrary to a strong public policy of the jurisdiction having
9 the most significant relationship to the matter at issue; or

10 B. in the absence of a controlling designation in
11 the terms of the trust, the law of the jurisdiction having the
12 most significant relationship to the matter at issue.

13 Section 1-108. PRINCIPAL PLACE OF ADMINISTRATION. --

14 A. Without precluding other means for establishing
15 a sufficient connection with the designated jurisdiction, terms
16 of a trust designating the principal place of administration
17 are valid and controlling if:

18 (1) a trustee's principal place of business is
19 located in or a trustee is a resident of the designated
20 jurisdiction; or

21 (2) all or part of the administration occurs
22 in the designated jurisdiction.

23 B. A trustee is under a continuing duty to
24 administer the trust at a place appropriate to its purposes,
25 its administration and the interests of the beneficiaries.

1 C. Without precluding the right of the court to
2 order, approve or disapprove a transfer, the trustee, in
3 furtherance of the duty prescribed by Subsection B of this
4 section, may transfer the trust's principal place of
5 administration to another state or to a jurisdiction outside of
6 the United States.

7 D. The trustee shall notify the qualified
8 beneficiaries of a proposed transfer of a trust's principal
9 place of administration not less than sixty days before
10 initiating the transfer. The notice of proposed transfer must
11 include:

12 (1) the name of the jurisdiction to which the
13 principal place of administration is to be transferred;

14 (2) the address and telephone number at the
15 new location at which the trustee can be contacted;

16 (3) an explanation of the reasons for the
17 proposed transfer;

18 (4) the date on which the proposed transfer is
19 anticipated to occur; and

20 (5) the date, not less than sixty days after
21 the giving of the notice, by which the qualified beneficiary
22 must notify the trustee of an objection to the proposed
23 transfer.

24 E. The authority of a trustee under this section to
25 transfer a trust's principal place of administration terminates

. 144858. 1

1 if a qualified beneficiary notifies the trustee of an objection
2 to the proposed transfer on or before the date specified in the
3 notice.

4 F. In connection with a transfer of the trust's
5 principal place of administration, the trustee may transfer
6 some or all of the trust property to a successor trustee
7 designated in the terms of the trust or appointed pursuant to
8 Section 7-704 of the Uniform Trust Code.

9 Section 1-109. METHODS AND WAIVER OF NOTICE. --

10 A. Notice to a person under the Uniform Trust Code
11 or the sending of a document to a person under that code must
12 be accomplished in a manner reasonably suitable under the
13 circumstances and likely to result in receipt of the notice or
14 document. Permissible methods of notice or for sending a
15 document include first-class mail, personal delivery, delivery
16 to the person's last known place of residence or place of
17 business or a properly directed electronic message.

18 B. Notice otherwise required under the Uniform
19 Trust Code or a document otherwise required to be sent under
20 that code need not be provided to a person whose identity or
21 location is unknown to and not reasonably ascertainable by the
22 trustee.

23 C. Notice under the Uniform Trust Code or the
24 sending of a document under that code may be waived by the
25 person to be notified or sent the document.

1 D. Notice of a judicial proceeding must be given as
2 provided in the applicable rules of civil procedure.

3 Section 1-110. OTHERS TREATED AS QUALIFIED
4 BENEFICIARIES. --

5 A. Whenever notice to qualified beneficiaries of a
6 trust is required under the Uniform Trust Code, the trustee
7 must also give notice to any other beneficiary who has sent the
8 trustee a request for notice.

9 B. A charitable organization expressly designated
10 to receive distributions under the terms of a charitable trust
11 or a person appointed to enforce a trust created for the care
12 of an animal or another noncharitable purpose as provided in
13 Section 4-408 or 4-409 of the Uniform Trust Code has the rights
14 of a qualified beneficiary under that code.

15 C. The attorney general of this state has the
16 rights of a qualified beneficiary with respect to a charitable
17 trust having its principal place of administration in this
18 state.

19 Section 1-111. NONJUDICIAL SETTLEMENT AGREEMENTS. --

20 A. For purposes of this section, "interested
21 persons" means persons whose consent would be required in order
22 to achieve a binding settlement were the settlement to be
23 approved by the court.

24 B. Except as otherwise provided in Subsection C of
25 this section, interested persons may enter into a binding

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1 nonjudicial settlement agreement with respect to any matter
2 involving a trust.

3 C. A nonjudicial settlement agreement is valid only
4 to the extent it does not violate a material purpose of the
5 trust and includes terms and conditions that could be properly
6 approved by the court under the Uniform Trust Code or other
7 applicable law.

8 D. Matters that may be resolved by a nonjudicial
9 settlement agreement include:

10 (1) the interpretation or construction of the
11 terms of the trust;

12 (2) the approval of a trustee's report or
13 accounting;

14 (3) direction to a trustee to refrain from
15 performing a particular act or the grant to a trustee of any
16 necessary or desirable power;

17 (4) the resignation or appointment of a
18 trustee and the determination of a trustee's compensation;

19 (5) transfer of a trust's principal place of
20 administration; and

21 (6) liability of a trustee for an action
22 relating to the trust.

23 E. Any interested person may request the court to
24 approve a nonjudicial settlement agreement to determine whether
25 the representation as provided in Article 3 of the Uniform

1 Trust Code was adequate and to determine whether the agreement
2 contains terms and conditions the court could have properly
3 approved.

4 Section 1-112. RULES OF CONSTRUCTION. --The rules of
5 construction that apply in this state to the interpretation of
6 and disposition of property by will also apply as appropriate
7 to the interpretation of the terms of a trust and the
8 disposition of the trust property.

9 ARTICLE 2

10 JUDICIAL PROCEEDINGS

11 Section 2-201. ROLE OF COURT IN ADMINISTRATION OF
12 TRUST. --

13 A. The court may intervene in the administration of
14 a trust to the extent its jurisdiction is invoked by an
15 interested person or as provided by law.

16 B. A trust is not subject to continuing judicial
17 supervision unless ordered by the court.

18 C. A judicial proceeding involving a trust may
19 relate to any matter involving the trust's administration,
20 including a request for instructions and an action to declare
21 rights.

22 Section 2-202. JURISDICTION OVER TRUSTEE AND
23 BENEFICIARY. --

24 A. By accepting the trusteeship of a trust having
25 its principal place of administration in this state or by

. 144858. 1

1 moving the principal place of administration to this state, the
2 trustee submits personally to the jurisdiction of the courts of
3 this state regarding any matter involving the trust.

4 B. With respect to their interests in the trust,
5 the beneficiaries of a trust having its principal place of
6 administration in this state are subject to the jurisdiction of
7 the courts of this state regarding any matter involving the
8 trust. By accepting a distribution from such a trust, the
9 recipient submits personally to the jurisdiction of the courts
10 of this state regarding any matter involving the trust.

11 C. This section does not preclude other methods of
12 obtaining jurisdiction over a trustee, beneficiary or other
13 person receiving property from the trust.

14 Section 2-203. SUBJECT-MATTER JURISDICTION. --

15 A. The district court has exclusive jurisdiction of
16 proceedings in this state brought by a trustee or beneficiary
17 concerning the administration of a trust.

18 B. The district court has concurrent jurisdiction
19 with other courts of this state of other proceedings involving
20 a trust.

21 ARTICLE 3

22 REPRESENTATION

23 Section 3-301. REPRESENTATION--BASIC EFFECT. --

24 A. Notice to a person who may represent and bind
25 another person under this article has the same effect as if

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1 notice were given directly to the other person.

2 B. The consent of a person who may represent and
3 bind another person under this article is binding on the person
4 represented unless the person represented objects to the
5 representation before the consent would otherwise have become
6 effective.

7 C. Except as otherwise provided in Sections 4-411
8 and 6-602 of the Uniform Trust Code, a person who under this
9 article may represent a settlor who lacks capacity may receive
10 notice and give a binding consent on the settlor's behalf.

11 Section 3-302. REPRESENTATION BY HOLDER OF GENERAL
12 TESTAMENTARY POWER OF APPOINTMENT.--To the extent there is no
13 conflict of interest between the holder of a general
14 testamentary power of appointment and the persons represented
15 with respect to the particular question or dispute, the holder
16 may represent and bind persons whose interests, as permissible
17 appointees, takers in default or otherwise, are subject to the
18 power.

19 Section 3-303. REPRESENTATION BY FIDUCIARIES AND
20 PARENTS.--To the extent there is no conflict of interest
21 between the representative and the person represented or among
22 those being represented with respect to a particular question
23 or dispute:

24 A. a conservator may represent and bind the estate
25 that the conservator controls;

. 144858. 1

1 B. a guardian may represent and bind the ward if a
2 conservator of the ward's estate has not been appointed;

3 C. an agent having authority to act with respect to
4 the particular question or dispute may represent and bind the
5 principal;

6 D. a trustee may represent and bind the
7 beneficiaries of the trust;

8 E. a personal representative of a decedent's estate
9 may represent and bind persons interested in the estate; and

10 F. a parent may represent and bind the parent's
11 minor or unborn child if a conservator or guardian for the
12 child has not been appointed.

13 Section 3-304. REPRESENTATION BY PERSON HAVING
14 SUBSTANTIALLY IDENTICAL INTEREST. -- Unless otherwise
15 represented, a minor, incapacitated or unborn person, or a
16 person whose identity or location is unknown and not reasonably
17 ascertainable, may be represented by and bound by another
18 having a substantially identical interest with respect to the
19 particular question or dispute, but only to the extent there is
20 no conflict of interest between the representative and the
21 person represented.

22 Section 3-305. APPOINTMENT OF REPRESENTATIVE. --

23 A. If the court determines that an interest is not
24 represented under this article, or that the otherwise available
25 representation might be inadequate, the court may appoint a

1 representative to receive notice, give consent and otherwise
2 represent, bind and act on behalf of a minor, incapacitated or
3 unborn person, or a person whose identity or location is
4 unknown. A representative may be appointed to represent
5 several persons or interests.

6 B. A representative may act on behalf of the person
7 represented with respect to any matter arising under the
8 Uniform Trust Code, whether or not a judicial proceeding
9 concerning the trust is pending.

10 C. In making decisions, a representative may
11 consider the general benefit accruing to the living members of
12 the person's family.

13 ARTICLE 4

14 CREATION, VALIDITY, MODIFICATION

15 AND TERMINATION OF TRUST

16 Section 4-401. METHODS OF CREATING TRUST.--A trust may be
17 created by:

18 A. transfer of property to another person as
19 trustee during the settlor's lifetime or by will or other
20 disposition taking effect upon the settlor's death;

21 B. declaration by the owner of property that the
22 owner holds identifiable property as trustee; or

23 C. exercise of a power of appointment in favor of a
24 trustee.

25 Section 4-402. REQUIREMENTS FOR CREATION.--

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- 1 A. A trust is created only if:
- 2 (1) the settlor has capacity to create a
- 3 trust;
- 4 (2) the settlor indicates an intention to
- 5 create the trust;
- 6 (3) the trust has a definite beneficiary or
- 7 is:
- 8 (a) a charitable trust;
- 9 (b) a trust for the care of an animal,
- 10 as provided in Section 4-408 of the Uniform Trust Code; or
- 11 (c) a trust for a noncharitable purpose,
- 12 as provided in Section 4-409 of the Uniform Trust Code;
- 13 (4) the trustee has duties to perform; and
- 14 (5) the same person is not the sole trustee
- 15 and sole beneficiary.

16 B. A beneficiary is definite if the beneficiary can

17 be ascertained now or in the future, subject to any applicable

18 rule against perpetuities.

19 C. A power in a trustee to select a beneficiary

20 from an indefinite class is valid. If the power is not

21 exercised within a reasonable time, the power fails and the

22 property subject to the power passes to the persons who would

23 have taken the property had the power not been conferred.

24 Section 4-403. TRUSTS CREATED IN OTHER JURISDICTIONS.--A

25 trust not created by will is validly created if its creation

1 complies with the law of the jurisdiction in which the trust
2 instrument was executed or the law of the jurisdiction in
3 which, at the time of creation:

4 A. the settlor was domiciled, had a place of abode
5 or was a national;

6 B. a trustee was domiciled or had a place of
7 business; or

8 C. any trust property was located.

9 Section 4-404. TRUST PURPOSES. --A trust may be created
10 only to the extent its purposes are lawful, not contrary to
11 public policy and possible to achieve. A trust and its terms
12 must be for the benefit of its beneficiaries.

13 Section 4-405. CHARITABLE PURPOSES--ENFORCEMENT. --

14 A. A charitable trust may be created for the relief
15 of poverty, the advancement of education or religion, the
16 promotion of health, governmental or municipal purposes or
17 other purposes the achievement of which is beneficial to the
18 community.

19 B. If the terms of a charitable trust do not
20 indicate a particular charitable purpose or beneficiary, the
21 court may select one or more charitable purposes or
22 beneficiaries. The selection must be consistent with the
23 settlor's intention to the extent it can be ascertained.

24 C. The settlor of a charitable trust, among others,
25 may maintain a proceeding to enforce the trust.

. 144858. 1

1 D. The corpus and income of a charitable trust may
2 only be expended in furtherance of the charitable mission of
3 the charitable trust, unless that charitable mission is amended
4 or the charitable trust terminated pursuant to a cy pres
5 proceeding as described in Section 4-413 of the Uniform Trust
6 Code.

7 E. The attorney general, as parens patriae, shall
8 have authority to maintain a proceeding to enforce the
9 charitable trust and its charitable mission.

10 F. Nothing contained in the Uniform Trust Code
11 shall limit the authority of the attorney general under the
12 Charitable Solicitations Act.

13 Section 4-406. CREATION OF TRUST INDUCED BY FRAUD, DURESS
14 OR UNDUE INFLUENCE. --A trust is void to the extent its creation
15 was induced by fraud, duress or undue influence.

16 Section 4-407. EVIDENCE OF ORAL TRUST. --Except as
17 required by a statute other than the Uniform Trust Code, a
18 trust need not be evidenced by a trust instrument, but the
19 creation of an oral trust and its terms may be established only
20 by clear and convincing evidence.

21 Section 4-408. TRUST FOR CARE OF ANIMAL. --

22 A. A trust may be created to provide for the care
23 of an animal alive during the settlor's lifetime. The trust
24 terminates upon the death of the animal or, if the trust was
25 created to provide for the care of more than one animal alive

1 during the settlor's lifetime, upon the death of the last
2 surviving animal.

3 B. A trust authorized by this section may be
4 enforced by a person appointed in the terms of the trust or, if
5 no person is so appointed, by a person appointed by the court.
6 A person having an interest in the welfare of the animal may
7 request the court to appoint a person to enforce the trust or
8 to remove a person appointed.

9 C. Property of a trust authorized by this section
10 may be applied only to its intended use, except to the extent
11 the court determines that the value of the trust property
12 exceeds the amount required for the intended use. Except as
13 otherwise provided in the terms of the trust, property not
14 required for the intended use must be distributed to the
15 settlor, if then living, otherwise to the settlor's successors
16 in interest.

17 Section 4-409. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE
18 BENEFICIARY. -- Except as otherwise provided in Section 4-408 of
19 the Uniform Trust Code or by another statute, the following
20 rules apply:

21 A. a trust may be created for a noncharitable
22 purpose without a definite or definitely ascertainable
23 beneficiary or for a noncharitable but otherwise valid purpose
24 to be selected by the trustee. The trust may not be enforced
25 for more than twenty-one years.

. 144858. 1

1 B. a trust authorized by this section may be
2 enforced by a person appointed in the terms of the trust or, if
3 no person is so appointed, by a person appointed by the court;
4 and

5 C. property of a trust authorized by this section
6 may be applied only to its intended use, except to the extent
7 the court determines that the value of the trust property
8 exceeds the amount required for the intended use. Except as
9 otherwise provided in the terms of the trust, property not
10 required for the intended use must be distributed to the
11 settlor, if then living, otherwise to the settlor's successors
12 in interest.

13 Section 4-410. MODIFICATION OR TERMINATION OF TRUST--
14 PROCEEDINGS FOR APPROVAL OR DISAPPROVAL. --

15 A. In addition to the methods of termination
16 prescribed by Sections 4-411 through 4-414 of the Uniform Trust
17 Code, a trust terminates to the extent the trust is revoked or
18 expires pursuant to its terms, no purpose of the trust remains
19 to be achieved or the purposes of the trust have become
20 unlawful, contrary to public policy or impossible to achieve.

21 B. A proceeding to approve or disapprove a proposed
22 modification or termination under Sections 4-411 through 4-416
23 of the Uniform Trust Code or a trust combination or division
24 under Section 4-417 of that code may be commenced by a trustee
25 or beneficiary, and a proceeding to approve or disapprove a

1 proposed modification or termination under Section 4-411 of
 2 that code may be commenced by the settlor. The settlor of a
 3 charitable trust may maintain a proceeding to modify the trust
 4 under Section 4-413 of that code.

5 Section 4-411. MODIFICATION OR TERMINATION OF
 6 NONCHARITABLE IRREVOCABLE TRUST BY CONSENT. --

7 A. A noncharitable irrevocable trust may be
 8 modified or terminated upon consent of the settlor and all
 9 beneficiaries, even if the modification or termination is
 10 inconsistent with a material purpose of the trust. A settlor's
 11 power to consent to a trust's termination may be exercised by
 12 an agent under a power of attorney only to the extent expressly
 13 authorized by the power of attorney or the terms of the trust;
 14 by the settlor's conservator with the approval of the court
 15 supervising the conservatorship if an agent is not so
 16 authorized; or by the settlor's guardian with the approval of
 17 the court supervising the guardianship if an agent is not so
 18 authorized and a conservator has not been appointed.

19 B. A noncharitable irrevocable trust may be
 20 terminated upon consent of all of the beneficiaries if the
 21 court concludes that continuance of the trust is not necessary
 22 to achieve any material purpose of the trust. A noncharitable
 23 irrevocable trust may be modified upon consent of all of the
 24 beneficiaries if the court concludes that modification is not
 25 inconsistent with a material purpose of the trust.

. 144858. 1

1 C. A spendthrift provision in the terms of the
2 trust is not presumed to constitute a material purpose of the
3 trust.

4 D. Upon termination of a trust under Subsection A
5 or B of this section, the trustee shall distribute the trust
6 property as agreed by the beneficiaries.

7 E. If not all of the beneficiaries consent to a
8 proposed modification or termination of the trust under
9 Subsection A or B of this section, the modification or
10 termination may be approved by the court if the court is
11 satisfied that:

12 (1) if all of the beneficiaries had consented,
13 the trust could have been modified or terminated under this
14 section; and

15 (2) the interests of a beneficiary who does
16 not consent will be adequately protected.

17 Section 4-412. MODIFICATION OR TERMINATION BECAUSE OF
18 UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST
19 EFFECTIVELY. --

20 A. The court may modify the administrative or
21 dispositive terms of a trust or terminate the trust if, because
22 of circumstances not anticipated by the settlor, modification
23 or termination will further the purposes of the trust. To the
24 extent practicable, the modification must be made in accordance
25 with the settlor's probable intention.

1 B. The court may modify the administrative terms of
2 a trust if continuation of the trust on its existing terms
3 would be impracticable or wasteful or impair the trust's
4 administration.

5 C. Upon termination of a trust under this section,
6 the trustee shall distribute the trust property in a manner
7 consistent with the purposes of the trust.

8 Section 4-413. CY PRES. --

9 A. Except as otherwise provided in Subsection B of
10 this section, if a particular charitable purpose becomes
11 unlawful, impracticable, impossible to achieve or wasteful:

12 (1) the trust does not fail, in whole or in
13 part;

14 (2) the trust property does not revert to the
15 settlor or the settlor's successors in interest; and

16 (3) the court may apply cy pres to modify or
17 terminate the trust by directing that the trust property be
18 applied or distributed, in whole or in part, in a manner
19 consistent with the settlor's charitable purposes.

20 B. A provision in the terms of a charitable trust
21 that would result in distribution of the trust property to a
22 noncharitable beneficiary prevails over the power of the court
23 under Subsection A of this section to apply cy pres to modify
24 or terminate the trust only if, when the provision takes
25 effect:

. 144858. 1

1 (1) the trust property is to revert to the
2 settlor and the settlor is still living; or

3 (2) fewer than twenty-one years have elapsed
4 since the date of the trust's creation.

5 C. The attorney general as parens patriae is a
6 necessary party to any cy pres proceeding in the Uniform Trust
7 Code.

8 Section 4-414. TERMINATION OF UNECONOMIC TRUST. --

9 A. After notice to the qualified beneficiaries, the
10 trustee of a trust consisting of trust property having a total
11 value less than fifty thousand dollars (\$50,000) may terminate
12 the trust if the trustee concludes that the value of the trust
13 property is insufficient to justify the cost of administration.

14 B. The court may modify or terminate a trust or
15 remove the trustee and appoint a different trustee if it
16 determines that the value of the trust property is insufficient
17 to justify the cost of administration.

18 C. Upon termination of a trust under this section,
19 the trustee shall distribute the trust property in a manner
20 consistent with the purposes of the trust.

21 D. This section does not apply to an easement for
22 conservation or preservation.

23 Section 4-415. REFORMATION TO CORRECT MISTAKES. -- The
24 court may reform the terms of a trust, even if unambiguous, to
25 conform the terms to the settlor's intention if it is proved by

1 clear and convincing evidence that both the settlor's intent
2 and the terms of the trust were affected by a mistake of fact
3 or law, whether in expression or inducement.

4 Section 4-416. MODIFICATION TO ACHIEVE SETTLOR'S TAX
5 OBJECTIVES. --To achieve the settlor's tax objectives, the court
6 may modify the terms of a trust in a manner that is not
7 contrary to the settlor's probable intention. The court may
8 provide that the modification has retroactive effect.

9 Section 4-417. COMBINATION AND DIVISION OF TRUSTS. --After
10 notice to the qualified beneficiaries, a trustee may combine
11 two or more trusts into a single trust or divide a trust into
12 two or more separate trusts, if the result does not impair
13 rights of any beneficiary or adversely affect achievement of
14 the purposes of the trust.

15 ARTICLE 5

16 CREDITOR'S CLAIMS--SPENDTHRIFT AND DISCRETIONARY TRUSTS

17 Section 5-501. RIGHTS OF BENEFICIARY'S CREDITOR OR
18 ASSIGNEE. --To the extent a beneficiary's interest is not
19 protected by a spendthrift provision, the court may authorize a
20 creditor or assignee of the beneficiary to reach the
21 beneficiary's interest by attachment of present or future
22 distributions to or for the benefit of the beneficiary or other
23 means. The court may limit the award to such relief as is
24 appropriate under the circumstances.

25 Section 5-502. SPENDTHRIFT PROVISION. --

underscoring material = new
[bracketed material] = delete

1 A. A spendthrift provision is valid only if it
2 restrains both voluntary and involuntary transfer of a
3 beneficiary's interest.

4 B. A term of a trust providing that the interest of
5 a beneficiary is held subject to a "spendthrift trust", or
6 words of similar import, is sufficient to restrain both
7 voluntary and involuntary transfer of the beneficiary's
8 interest.

9 C. A beneficiary may not transfer an interest in a
10 trust in violation of a valid spendthrift provision and, except
11 as otherwise provided in this article, a creditor or assignee
12 of the beneficiary may not reach the interest or a distribution
13 by the trustee before its receipt by the beneficiary.

14 Section 5-503. EXCEPTIONS TO SPENDTHRIFT PROVISION. --

15 A. As used in this section, "child" includes any
16 person for whom an order or judgment for child support has been
17 entered in this or another state.

18 B. Even if a trust contains a spendthrift
19 provision, a beneficiary's child, spouse or former spouse who
20 has a judgment or court order against the beneficiary for
21 support or maintenance, or a judgment creditor who has provided
22 services for the protection of a beneficiary's interest in the
23 trust, may obtain from a court an order attaching present or
24 future distributions to or for the benefit of the beneficiary.

25 C. A spendthrift provision is unenforceable against

1 a claim of this state or the United States to the extent a
2 statute of this state or federal law so provides.

3 Section 5-504. DISCRETIONARY TRUSTS--EFFECT OF
4 STANDARD. --

5 A. As used in this section, "child" includes any
6 person for whom an order or judgment for child support has been
7 entered in this or another state.

8 B. Except as otherwise provided in Subsection C of
9 this section, whether or not a trust contains a spendthrift
10 provision, a creditor of a beneficiary may not compel a
11 distribution that is subject to the trustee's discretion, even
12 if:

13 (1) the discretion is expressed in the form of
14 a standard of distribution; or

15 (2) the trustee has abused the discretion.

16 C. To the extent a trustee has not complied with a
17 standard of distribution or has abused a discretion:

18 (1) a distribution may be ordered by the court
19 to satisfy a judgment or court order against the beneficiary
20 for support or maintenance of the beneficiary's child, spouse
21 or former spouse; and

22 (2) the court shall direct the trustee to pay
23 to the child, spouse or former spouse such amount as is
24 equitable under the circumstances but not more than the amount
25 the trustee would have been required to distribute to or for

. 144858. 1

1 the benefit of the beneficiary had the trustee complied with
2 the standard or not abused the discretion.

3 D. This section does not limit the right of a
4 beneficiary to maintain a judicial proceeding against a trustee
5 for an abuse of discretion or failure to comply with a standard
6 for distribution.

7 Section 5-505. CREDITOR'S CLAIM AGAINST SETTLOR. --

8 A. Whether or not the terms of a trust contain a
9 spendthrift provision, the following rules apply:

10 (1) during the lifetime of the settlor, the
11 property of a revocable trust is subject to claims of the
12 settlor's creditors;

13 (2) with respect to an irrevocable trust, a
14 creditor or assignee of the settlor may reach the maximum
15 amount that can be distributed to or for the settlor's benefit.
16 If a trust has more than one settlor, the amount the creditor
17 or assignee of a particular settlor may reach may not exceed
18 the settlor's interest in the portion of the trust attributable
19 to that settlor's contribution; and

20 (3) after the death of a settlor, and subject
21 to the settlor's right to direct the source from which
22 liabilities will be paid, the property of a trust that was
23 revocable at the settlor's death is subject to claims of the
24 settlor's creditors, costs of administration of the settlor's
25 estate, the expenses of the settlor's funeral and disposal of

1 remains and statutory allowances to a surviving spouse and
 2 children to the extent the settlor's probate estate is
 3 inadequate to satisfy those claims, costs, expenses and
 4 allowances.

5 B. For purposes of this section:

6 (1) during the period the power may be
 7 exercised, the holder of a power of withdrawal is treated in
 8 the same manner as the settlor of a revocable trust to the
 9 extent of the property subject to the power; and

10 (2) upon the lapse, release or waiver of the
 11 power, the holder is treated as the settlor of the trust only
 12 to the extent the value of the property affected by the lapse,
 13 release or waiver exceeds the greater of the amount specified
 14 in Section 2041(b)(2), 2514(e) or 2503(b) of the Internal
 15 Revenue Code of 1986, as amended.

16 Section 5-506. OVERDUE DISTRIBUTION. -- Whether or not a
 17 trust contains a spendthrift provision, a creditor or assignee
 18 of a beneficiary may reach a mandatory distribution of income
 19 or principal, including a distribution upon termination of the
 20 trust, if the trustee has not made the distribution to the
 21 beneficiary within a reasonable time after the designated
 22 distribution date.

23 Section 5-507. PERSONAL OBLIGATIONS OF TRUSTEE. -- Trust
 24 property is not subject to personal obligations of the trustee,
 25 even if the trustee becomes insolvent or bankrupt.

. 144858. 1

ARTICLE 6

REVOCABLE TRUSTS

Section 6-601. CAPACITY OF SETTLOR OF REVOCABLE TRUST. --

The capacity required to create, amend, revoke or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

Section 6-602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST. --

A. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of the Uniform Trust Code.

B. If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; and

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

C. The settlor may revoke or amend a revocable

underscoring material = new
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1 trust:

2 (1) by substantial compliance with a method
3 provided in the terms of the trust; or

4 (2) if the terms of the trust do not provide a
5 method or the method provided in the terms is not expressly
6 made exclusive, by:

7 (a) a later will or codicil that
8 expressly refers to the trust or specifically devises property
9 that would otherwise have passed according to the terms of the
10 trust; or

11 (b) any other method manifesting clear
12 and convincing evidence of the settlor's intent.

13 D. Upon revocation of a revocable trust, the
14 trustee shall deliver the trust property as the settlor
15 directs.

16 E. A settlor's powers with respect to revocation,
17 amendment or distribution of trust property may be exercised by
18 an agent under a power of attorney only to the extent expressly
19 authorized by the terms of the trust or the power.

20 F. A conservator of the settlor or, if no
21 conservator has been appointed, a guardian of the settlor may
22 exercise a settlor's powers with respect to revocation,
23 amendment or distribution of trust property only with the
24 approval of the court supervising the conservatorship or
25 guardianship.

. 144858. 1

1 G. A trustee who does not know that a trust has
2 been revoked or amended is not liable to the settlor or
3 settlor's successors in interest for distributions made and
4 other actions taken on the assumption that the trust had not
5 been amended or revoked.

6 Section 6-603. SETTLOR'S POWERS--POWERS OF WITHDRAWAL.--

7 A. While a trust is revocable and the settlor has
8 capacity to revoke the trust, rights of the beneficiaries are
9 subject to the control of, and the duties of the trustee are
10 owed exclusively to, the settlor.

11 B. If a revocable trust has more than one settlor,
12 the duties of the trustee are owed to all of the settlors
13 having capacity to revoke the trust.

14 C. During the period the power may be exercised,
15 the holder of a power of withdrawal has the rights of a settlor
16 of a revocable trust under this section to the extent of the
17 property subject to the power.

18 ARTICLE 7

19 OFFICE OF TRUSTEE

20 Section 7-701. ACCEPTING OR DECLINING TRUSTEESHIP.--

21 A. Except as otherwise provided in Subsection C of
22 this section, a person designated as trustee accepts the
23 trusteeship:

24 (1) by substantially complying with a method
25 of acceptance provided in the terms of the trust; or

underscored material = new
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1 (2) if the terms of the trust do not provide a
2 method or the method provided in the terms is not expressly
3 made exclusive, by accepting delivery of the trust property,
4 exercising powers or performing duties as trustee or otherwise
5 indicating acceptance of the trusteeship.

6 B. A person designated as trustee who has not yet
7 accepted the trusteeship may reject the trusteeship. A
8 designated trustee who does not accept the trusteeship within a
9 reasonable time after knowing of the designation is deemed to
10 have rejected the trusteeship.

11 C. A person designated as trustee, without
12 accepting the trusteeship, may:

13 (1) act to preserve the trust property if,
14 within a reasonable time after acting, the person sends a
15 rejection of the trusteeship to the settlor or, if the settlor
16 is dead or lacks capacity, to a qualified beneficiary; and

17 (2) inspect or investigate trust property to
18 determine potential liability under environmental law or other
19 law or for any other purpose.

20 Section 7-702. TRUSTEE'S BOND. --

21 A. A trustee shall give bond to secure performance
22 of the trustee's duties only if the court finds that a bond is
23 needed to protect the interests of the beneficiaries or is
24 required by the terms of the trust and the court has not
25 dispensed with the requirement.

. 144858. 1

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[bracketed material] = delete

1 B. The court may specify the amount of a bond, its
2 liabilities and whether sureties are necessary. The court may
3 modify or terminate a bond at any time.

4 Section 7-703. CO-TRUSTEES. --

5 A. Co-trustees who are unable to reach a unanimous
6 decision may act by majority decision.

7 B. If a vacancy occurs in a co-trusteeship, the
8 remaining co-trustees may act for the trust.

9 C. A co-trustee must participate in the performance
10 of a trustee's function unless the co-trustee is unavailable to
11 perform the function because of absence, illness,
12 disqualification under other law or other temporary incapacity,
13 or the co-trustee has properly delegated the performance of the
14 function to another trustee.

15 D. If a co-trustee is unavailable to perform duties
16 because of absence, illness, disqualification under other law
17 or other temporary incapacity, and prompt action is necessary
18 to achieve the purposes of the trust or to avoid injury to the
19 trust property, the remaining co-trustee or a majority of the
20 remaining co-trustees may act for the trust.

21 E. A trustee may not delegate to a co-trustee the
22 performance of a function the settlor reasonably expected the
23 trustees to perform jointly. Unless a delegation was
24 irrevocable, a trustee may revoke a delegation previously made.

25 F. Except as otherwise provided in Subsection G of

1 this section, a trustee who does not join in an action of
2 another trustee is not liable for the action.

3 G. Each trustee shall exercise reasonable care to:

4 (1) prevent a co-trustee from committing a
5 serious breach of trust; and

6 (2) compel a co-trustee to redress a serious
7 breach of trust.

8 H. A dissenting trustee who joins in an action at
9 the direction of the majority of the trustees and who notified
10 any co-trustee of the dissent at or before the time of the
11 action is not liable for the action unless the action is a
12 serious breach of trust.

13 Section 7-704. VACANCY IN TRUSTEESHIP--APPOINTMENT OF
14 SUCCESSOR. --

15 A. A vacancy in a trusteeship occurs if:

16 (1) a person designated as trustee rejects the
17 trusteeship;

18 (2) a person designated as trustee cannot be
19 identified or does not exist;

20 (3) a trustee resigns;

21 (4) a trustee is disqualified or removed;

22 (5) a trustee dies; or

23 (6) a guardian or conservator is appointed for
24 an individual serving as trustee.

25 B. If one or more co-trustees remain in office, a

. 144858. 1

1 vacancy in a trusteeship need not be filled. A vacancy in a
2 trusteeship must be filled if the trust has no remaining
3 trustee.

4 C. A vacancy in a trusteeship of a noncharitable
5 trust that is required to be filled must be filled in the
6 following order of priority:

7 (1) by a person designated in the terms of the
8 trust to act as successor trustee;

9 (2) by a person appointed by unanimous
10 agreement of the qualified beneficiaries; or

11 (3) by a person appointed by the court.

12 D. A vacancy in a trusteeship of a charitable trust
13 that is required to be filled must be filled in the following
14 order of priority:

15 (1) by a person designated in the terms of the
16 trust to act as successor trustee;

17 (2) by a person selected by the charitable
18 organizations expressly designated to receive distributions
19 under the terms of the trust if the attorney general concurs in
20 the selection; or

21 (3) by a person appointed by the court.

22 E. Whether or not a vacancy in a trusteeship exists
23 or is required to be filled, the court may appoint an
24 additional trustee or special fiduciary whenever the court
25 considers the appointment necessary for the administration of

1 the trust.

2 Section 7-705. RESIGNATION OF TRUSTEE. --

3 A. A trustee may resign:

4 (1) upon at least thirty days' notice to the
5 qualified beneficiaries and all co-trustees; or

6 (2) with the approval of the court.

7 B. In approving a resignation, the court may issue
8 orders and impose conditions reasonably necessary for the
9 protection of the trust property.

10 C. Any liability of a resigning trustee or of any
11 sureties on the trustee's bond for acts or omissions of the
12 trustee is not discharged or affected by the trustee's
13 resignation.

14 Section 7-706. REMOVAL OF TRUSTEE. --

15 A. The settlor, a co-trustee or a beneficiary may
16 request the court to remove a trustee or a trustee may be
17 removed by the court on its own initiative.

18 B. The court may remove a trustee if:

19 (1) the trustee has committed a serious breach
20 of trust;

21 (2) lack of cooperation among co-trustees
22 substantially impairs the administration of the trust;

23 (3) because of unfitness, unwillingness or
24 persistent failure of the trustee to administer the trust
25 effectively, the court determines that removal of the trustee

. 144858. 1

1 best serves the interests of the beneficiaries; or

2 (4) there has been a substantial change of
3 circumstances or removal is requested by all of the qualified
4 beneficiaries, the court finds that removal of the trustee best
5 serves the interests of all of the beneficiaries and is not
6 inconsistent with a material purpose of the trust, and a
7 suitable co-trustee or successor trustee is available.

8 C. Pending a final decision on a request to remove
9 a trustee, or in lieu of or in addition to removing a trustee,
10 the court may order such appropriate relief as may be necessary
11 to protect the trust property or the interests of the
12 beneficiaries.

13 Section 7-707. DELIVERY OF PROPERTY BY FORMER TRUSTEE. --

14 A. Unless a co-trustee remains in office or the
15 court otherwise orders, and until the trust property is
16 delivered to a successor trustee or other person entitled to
17 it, a trustee who has resigned or been removed has the duties
18 of a trustee and the powers necessary to protect the trust
19 property.

20 B. A trustee who has resigned or been removed shall
21 proceed expeditiously to deliver the trust property within the
22 trustee's possession to the co-trustee, successor trustee or
23 other person entitled to it.

24 Section 7-708. COMPENSATION OF TRUSTEE. --

25 A. If the terms of a trust do not specify the

1 trustee's compensation, a trustee is entitled to compensation
2 that is reasonable under the circumstances.

3 B. If the terms of a trust specify the trustee's
4 compensation, the trustee is entitled to be compensated as
5 specified, but the court may allow more or less compensation
6 if:

7 (1) the duties of the trustee are
8 substantially different from those contemplated when the trust
9 was created; or

10 (2) the compensation specified by the terms of
11 the trust would be unreasonably low or high.

12 Section 7-709. REIMBURSEMENT OF EXPENSES. --

13 A. A trustee is entitled to be reimbursed out of
14 the trust property, with interest as appropriate, for:

15 (1) expenses that were properly incurred in
16 the administration of the trust; and

17 (2) to the extent necessary to prevent unjust
18 enrichment of the trust, expenses that were not properly
19 incurred in the administration of the trust.

20 B. An advance by the trustee of money for the
21 protection of the trust gives rise to a lien against trust
22 property to secure reimbursement with reasonable interest.

23 ARTICLE 8

24 DUTIES AND POWERS OF TRUSTEE

25 Section 8-801. DUTY TO ADMINISTER TRUST. -- Upon acceptance

. 144858. 1

1 of a trusteeship, the trustee shall administer the trust in
2 good faith, in accordance with its terms and purposes and the
3 interests of the beneficiaries and in accordance with the
4 Uniform Trust Code.

5 Section 8-802. DUTY OF LOYALTY. --

6 A. A trustee shall administer the trust solely in
7 the interests of the beneficiaries.

8 B. Subject to the rights of persons dealing with or
9 assisting the trustee as provided in Section 10-1011 of the
10 Uniform Trust Code, a sale, encumbrance or other transaction
11 involving the investment or management of trust property
12 entered into by the trustee for the trustee's own personal
13 account or which is otherwise affected by a conflict between
14 the trustee's fiduciary and personal interests is voidable by a
15 beneficiary affected by the transaction unless:

- 16 (1) the transaction was authorized by the
17 terms of the trust;
18 (2) the transaction was approved by the court;
19 (3) the beneficiary consented to the trustee's
20 conduct, ratified the transaction or released the trustee in
21 compliance with Section 10-1008 of the Uniform Trust Code; or
22 (4) the transaction involved a contract
23 entered into or claim acquired by the trustee before the person
24 became or contemplated becoming trustee.

25 C. A sale, encumbrance or other transaction

1 involving the investment or management of trust property is
2 presumed to be affected by a conflict between personal and
3 fiduciary interests if it is entered into by the trustee with:

- 4 (1) the trustee's spouse;
- 5 (2) the trustee's descendants, siblings,
6 parents or the spouse of any of them;
- 7 (3) an agent or attorney of the trustee; or
- 8 (4) a corporation or other person or
9 enterprise in which the trustee, or a person that owns a
10 significant interest in the trustee, has an interest that might
11 affect the trustee's best judgment.

12 D. A transaction between a trustee and a
13 beneficiary that does not concern trust property but that
14 occurs during the existence of the trust or while the trustee
15 retains significant influence over the beneficiary and from
16 which the trustee obtains an advantage is voidable by the
17 beneficiary unless the trustee establishes that the transaction
18 was fair to the beneficiary.

19 E. A transaction not concerning trust property in
20 which the trustee engages in the trustee's individual capacity
21 involves a conflict between personal and fiduciary interests if
22 the transaction concerns an opportunity properly belonging to
23 the trust.

24 F. An investment by a trustee in securities of an
25 investment company or investment trust to which the trustee, or

1 its affiliate, provides services in a capacity other than as
2 trustee is not presumed to be affected by a conflict between
3 personal and fiduciary interests if the investment complies
4 with the Uniform Prudent Investor Act. The trustee may be
5 compensated by the investment company or investment trust for
6 providing those services out of fees charged to the trust if
7 the trustee at least annually notifies the persons entitled
8 under Section 8-813 of the Uniform Trust Code to receive a copy
9 of the trustee's annual report of the rate and method by which
10 the compensation was determined.

11 G. In voting shares of stock or in exercising
12 powers of control over similar interests in other forms of
13 enterprise, the trustee shall act in the best interests of the
14 beneficiaries. If the trust is the sole owner of a corporation
15 or other form of enterprise, the trustee shall elect or appoint
16 directors or other managers who will manage the corporation or
17 enterprise in the best interests of the beneficiaries.

18 H. This section does not preclude the following
19 transactions, if fair to the beneficiaries:

20 (1) an agreement between a trustee and a
21 beneficiary relating to the appointment or compensation of the
22 trustee;

23 (2) payment of reasonable compensation to the
24 trustee;

25 (3) a transaction between a trust and another

1 trust, decedent's estate or conservatorship of which the
2 trustee is a fiduciary or in which a beneficiary has an
3 interest;

4 (4) a deposit of trust money in a regulated
5 financial-service institution operated by the trustee; or

6 (5) an advance by the trustee of money for the
7 protection of the trust.

8 I. The court may appoint a special fiduciary to
9 make a decision with respect to any proposed transaction that
10 might violate this section if entered into by the trustee.

11 Section 8-803. IMPARTIALITY.--If a trust has two or more
12 beneficiaries, the trustee shall act impartially in investing,
13 managing and distributing the trust property, giving due regard
14 to the beneficiaries' respective interests.

15 Section 8-804. PRUDENT ADMINISTRATION.--A trustee shall
16 administer the trust as a prudent person would, by considering
17 the purposes, terms, distributional requirements and other
18 circumstances of the trust. In satisfying this standard, the
19 trustee shall exercise reasonable care, skill and caution.

20 Section 8-805. COSTS OF ADMINISTRATION.--In administering
21 a trust, the trustee may incur only costs that are reasonable
22 in relation to the trust property, the purposes of the trust
23 and the skills of the trustee.

24 Section 8-806. TRUSTEE'S SKILLS.--A trustee who has
25 special skills or expertise, or is named trustee in reliance

. 144858. 1

1 upon the trustee's representation that the trustee has special
2 skills or expertise, shall use those special skills or
3 expertise.

4 Section 8-807. DELEGATION BY TRUSTEE. --

5 A. A trustee may delegate duties and powers that a
6 prudent trustee of comparable skills could properly delegate
7 under the circumstances. The trustee shall exercise reasonable
8 care, skill and caution in:

9 (1) selecting an agent;

10 (2) establishing the scope and terms of the
11 delegation, consistent with the purposes and terms of the
12 trust; and

13 (3) periodically reviewing the agent's actions
14 in order to monitor the agent's performance and compliance with
15 the terms of the delegation.

16 B. In performing a delegated function, an agent
17 owes a duty to the trust to exercise reasonable care to comply
18 with the terms of the delegation.

19 C. A trustee who complies with Subsection A of this
20 section is not liable to the beneficiaries or to the trust for
21 an action of the agent to whom the function was delegated.

22 D. By accepting a delegation of powers or duties
23 from the trustee of a trust that is subject to the law of this
24 state, an agent submits to the jurisdiction of the courts of
25 this state.

1 Section 8-808. POWERS TO DIRECT. --

2 A. While a trust is revocable, the trustee may
3 follow a direction of the settlor that is contrary to the terms
4 of the trust.

5 B. If the terms of a trust confer upon a person
6 other than the settlor of a revocable trust power to direct
7 certain actions of the trustee, the trustee shall act in
8 accordance with an exercise of the power unless the attempted
9 exercise is manifestly contrary to the terms of the trust or
10 the trustee knows the attempted exercise would constitute a
11 serious breach of a fiduciary duty that the person holding the
12 power owes to the beneficiaries of the trust.

13 C. The terms of a trust may confer upon a trustee
14 or other person a power to direct the modification or
15 termination of the trust.

16 D. A person, other than a beneficiary, who holds a
17 power to direct is presumptively a fiduciary who, as such, is
18 required to act in good faith with regard to the purposes of
19 the trust and the interests of the beneficiaries. The holder
20 of a power to direct is liable for any loss that results from
21 breach of a fiduciary duty.

22 Section 8-809. CONTROL AND PROTECTION OF TRUST
23 PROPERTY. --A trustee shall take reasonable steps to take
24 control of and protect the trust property.

25 Section 8-810. RECORDKEEPING AND IDENTIFICATION OF TRUST

. 144858. 1

underscored material = new
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1 PROPERTY. --

2 A. A trustee shall keep adequate records of the
3 administration of the trust.

4 B. A trustee shall keep trust property separate
5 from the trustee's own property.

6 C. Except as otherwise provided in Subsection D of
7 this section, a trustee shall cause the trust property to be
8 designated so that the interest of the trust, to the extent
9 feasible, appears in records maintained by a party other than a
10 trustee or beneficiary.

11 D. If the trustee maintains records clearly
12 indicating the respective interests, a trustee may invest as a
13 whole the property of two or more separate trusts.

14 Section 8-811. ENFORCEMENT AND DEFENSE OF CLAIMS. -- A
15 trustee shall take reasonable steps to enforce claims of the
16 trust and to defend claims against the trust.

17 Section 8-812. COLLECTING TRUST PROPERTY. -- A trustee
18 shall take reasonable steps to compel a former trustee or other
19 person to deliver trust property to the trustee and to redress
20 a breach of trust known to the trustee to have been committed
21 by a former trustee.

22 Section 8-813. DUTY TO INFORM AND REPORT. --

23 A. A trustee shall keep the qualified beneficiaries
24 of the trust reasonably informed about the administration of
25 the trust and of the material facts necessary for them to

1 protect their interests. Unless unreasonable under the
 2 circumstances, a trustee shall promptly respond to a
 3 beneficiary's request for information related to the
 4 administration of the trust.

5 B. A trustee:

6 (1) upon request of a beneficiary, shall
 7 promptly furnish to the beneficiary a copy of the trust
 8 instrument;

9 (2) within sixty days after accepting a
 10 trusteeship, shall notify the qualified beneficiaries of the
 11 acceptance and of the trustee's name, address and telephone
 12 number;

13 (3) within sixty days after the date the
 14 trustee acquires knowledge of the creation of an irrevocable
 15 trust, or the date the trustee acquires knowledge that a
 16 formerly revocable trust has become irrevocable, whether by the
 17 death of the settlor or otherwise, shall notify the qualified
 18 beneficiaries of the trust's existence, of the identity of the
 19 settlor or settlors, of the right to request a copy of the
 20 trust instrument and of the right to a trustee's report as
 21 provided in Subsection C of this section; and

22 (4) shall notify the qualified beneficiaries
 23 in advance of any change in the method or rate of the trustee's
 24 compensation.

25 C. A trustee shall send to the distributees or

. 144858. 1

1 permissible distributees of trust income or principal, and to
2 other qualified or nonqualified beneficiaries who request it,
3 at least annually and at the termination of the trust, a report
4 of the trust property, liabilities, receipts and disbursements,
5 including the source and amount of the trustee's compensation,
6 a listing of the trust assets and, if feasible, their
7 respective market values. Upon a vacancy in a trusteeship,
8 unless a co-trustee remains in office, a report must be sent to
9 the qualified beneficiaries by the former trustee. A personal
10 representative, conservator or guardian may send the qualified
11 beneficiaries a report on behalf of a deceased or incapacitated
12 trustee.

13 D. A beneficiary may waive the right to a trustee's
14 report or other information otherwise required to be furnished
15 under this section. A beneficiary, with respect to future
16 reports and other information, may withdraw a waiver previously
17 given.

18 Section 8-814. DISCRETIONARY POWERS--TAX SAVINGS.--

19 A. Notwithstanding the breadth of discretion
20 granted to a trustee in the terms of the trust, including the
21 use of such terms as "absolute", "sole" or "uncontrolled", the
22 trustee shall exercise a discretionary power in good faith and
23 in accordance with the terms and purposes of the trust and the
24 interests of the beneficiaries.

25 B. Subject to Subsection D of this section, and

1 unless the terms of the trust expressly indicate that a rule in
2 this subsection does not apply:

3 (1) a person other than a settlor who is a
4 beneficiary and trustee of a trust that confers on the trustee
5 a power to make discretionary distributions to or for the
6 trustee's personal benefit may exercise the power only in
7 accordance with an ascertainable standard relating to the
8 trustee's individual health, education, support or maintenance
9 within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of
10 the Internal Revenue Code of 1986, as amended; and

11 (2) a trustee may not exercise a power to make
12 discretionary distributions to satisfy a legal obligation of
13 support that the trustee personally owes another person.

14 C. A power whose exercise is limited or prohibited
15 by Subsection B of this section may be exercised by a majority
16 of the remaining trustees whose exercise of the power is not so
17 limited or prohibited. If the power of all trustees is so
18 limited or prohibited, the court may appoint a special
19 fiduciary with authority to exercise the power.

20 D. Subsection B of this section does not apply to:

21 (1) a power held by the settlor's spouse who
22 is the trustee of a trust for which a marital deduction, as
23 defined in Section 2056(b)(5) or 2523(b)(5) of the Internal
24 Revenue Code of 1986, as amended, was previously allowed;

25 (2) any trust during any period that the trust

. 144858. 1

1 may be revoked or amended by its settlor; or

2 (3) a trust if contributions to the trust
3 qualify for the annual exclusion under Section 2503(c) of the
4 Internal Revenue Code of 1986, as amended.

5 Section 8-815. GENERAL POWERS OF TRUSTEE. --

6 A. A trustee, without authorization by the court,
7 may exercise:

8 (1) powers conferred by the terms of the
9 trust; or

10 (2) except as limited by the terms of the
11 trust:

12 (a) all powers over the trust property
13 that an unmarried competent owner has over individually owned
14 property;

15 (b) any other powers appropriate to
16 achieve the proper investment, management and distribution of
17 the trust property; and

18 (c) any other powers conferred by the
19 Uniform Trust Code.

20 B. The exercise of a power is subject to the
21 fiduciary duties prescribed by this article.

22 Section 8-816. SPECIFIC POWERS OF TRUSTEE. -- Without
23 limiting the authority conferred by Section 8-815 of the
24 Uniform Trust Code, a trustee may:

25 A. collect trust property and accept or reject

1 additions to the trust property from a settlor or any other
2 person;

3 B. acquire or sell property, for cash or on credit,
4 at public or private sale;

5 C. exchange, partition or otherwise change the
6 character of trust property;

7 D. deposit trust money in an account in a regulated
8 financial-service institution;

9 E. borrow money, with or without security, and
10 mortgage or pledge trust property for a period within or
11 extending beyond the duration of the trust;

12 F. with respect to an interest in a proprietorship,
13 partnership, limited liability company, business trust,
14 corporation or other form of business or enterprise, continue
15 the business or other enterprise and take any action that may
16 be taken by shareholders, members or property owners, including
17 merging, dissolving or otherwise changing the form of business
18 organization or contributing additional capital;

19 G. with respect to stocks or other securities,
20 exercise the rights of an absolute owner, including the right
21 to:

22 (1) vote, or give proxies to vote, with or
23 without power of substitution, or enter into or continue a
24 voting trust agreement;

25 (2) hold a security in the name of a nominee

. 144858. 1

1 or in other form without disclosure of the trust so that title
2 may pass by delivery;

3 (3) pay calls, assessments and other sums
4 chargeable or accruing against the securities and sell or
5 exercise stock subscription or conversion rights; and

6 (4) deposit the securities with a depository
7 or other regulated financial-service institution;

8 H. with respect to an interest in real property,
9 construct, or make ordinary or extraordinary repairs to,
10 alterations to, or improvements in, buildings or other
11 structures, demolish improvements, raze existing or erect new
12 party walls or buildings, subdivide or develop land, dedicate
13 land to public use or grant public or private easements, and
14 make or vacate plats and adjust boundaries;

15 I. enter into a lease for any purpose as lessor or
16 lessee, including a lease or other arrangement for exploration
17 and removal of natural resources, with or without the option to
18 purchase or renew, for a period within or extending beyond the
19 duration of the trust;

20 J. grant an option involving a sale, lease or other
21 disposition of trust property or acquire an option for the
22 acquisition of property, including an option exercisable beyond
23 the duration of the trust, and exercise an option so acquired;

24 K. insure the property of the trust against damage
25 or loss and insure the trustee, the trustee's agents and

1 beneficiaries against liability arising from the administration
2 of the trust;

3 L. abandon or decline to administer property of no
4 value or of insufficient value to justify its collection or
5 continued administration;

6 M with respect to possible liability for violation
7 of environmental law:

8 (1) inspect or investigate property the
9 trustee holds or has been asked to hold, or property owned or
10 operated by an organization in which the trustee holds or has
11 been asked to hold an interest, for the purpose of determining
12 the application of environmental law with respect to the
13 property;

14 (2) take action to prevent, abate or otherwise
15 remedy any actual or potential violation of any environmental
16 law affecting property held directly or indirectly by the
17 trustee, whether taken before or after the assertion of a claim
18 or the initiation of governmental enforcement;

19 (3) decline to accept property into trust or
20 disclaim any power with respect to property that is or may be
21 burdened with liability for violation of environmental law;

22 (4) compromise claims against the trust that
23 may be asserted for an alleged violation of environmental law;
24 and

25 (5) pay the expense of any inspection, review,

. 144858. 1

1 abatement or remedial action to comply with environmental law;

2 N. pay or contest any claim, settle a claim by or
3 against the trust and release, in whole or in part, a claim
4 belonging to the trust;

5 O. pay taxes, assessments, compensation of the
6 trustee and of employees and agents of the trust, and other
7 expenses incurred in the administration of the trust;

8 P. exercise elections with respect to federal,
9 state and local taxes;

10 Q. select a mode of payment under any employee
11 benefit or retirement plan, annuity or life insurance payable
12 to the trustee, exercise rights thereunder, including exercise
13 of the right to indemnification for expenses and against
14 liabilities, and take appropriate action to collect the
15 proceeds;

16 R. make loans out of trust property, including
17 loans to a beneficiary on terms and conditions the trustee
18 considers to be fair and reasonable under the circumstances,
19 and the trustee has a lien on future distributions for
20 repayment of those loans;

21 S. pledge trust property to guarantee loans made by
22 others to the beneficiary;

23 T. appoint a trustee to act in another jurisdiction
24 with respect to trust property located in the other
25 jurisdiction, confer upon the appointed trustee all of the

1 powers and duties of the appointing trustee, require that the
2 appointed trustee furnish security and remove any trustee so
3 appointed;

4 U. pay an amount distributable to a beneficiary who
5 is under a legal disability or who the trustee reasonably
6 believes is incapacitated, by paying it directly to the
7 beneficiary or applying it for the beneficiary's benefit, or
8 by:

9 (1) paying it to the beneficiary's conservator
10 or, if the beneficiary does not have a conservator, the
11 beneficiary's guardian;

12 (2) paying it to the beneficiary's custodian
13 under the Uniform Transfers to Minors Act or custodial trustee
14 under the Uniform Custodial Trust Act, and, for that purpose,
15 creating a custodianship or custodial trust;

16 (3) if the trustee does not know of a
17 conservator, guardian, custodian or custodial trustee, paying
18 it to an adult relative or other person having legal or
19 physical care or custody of the beneficiary, to be expended on
20 the beneficiary's behalf; or

21 (4) managing it as a separate fund on the
22 beneficiary's behalf, subject to the beneficiary's continuing
23 right to withdraw the distribution;

24 V. on distribution of trust property or the
25 division or termination of a trust, make distributions in

1 divided or undivided interests, allocate particular assets in
2 proportionate or disproportionate shares, value the trust
3 property for those purposes and adjust for resulting
4 differences in valuation;

5 W. resolve a dispute concerning the interpretation
6 of the trust or its administration by mediation, arbitration or
7 other procedure for alternative dispute resolution;

8 X. prosecute or defend an action, claim or judicial
9 proceeding in any jurisdiction to protect trust property and
10 the trustee in the performance of the trustee's duties;

11 Y. sign and deliver contracts and other instruments
12 that are useful to achieve or facilitate the exercise of the
13 trustee's powers; and

14 Z. on termination of the trust, exercise the powers
15 appropriate to wind up the administration of the trust and
16 distribute the trust property to the persons entitled to it.

17 Section 8-817. DISTRIBUTION UPON TERMINATION. --

18 A. Upon termination or partial termination of a
19 trust, the trustee may send to the beneficiaries a proposal for
20 distribution. The right of any beneficiary to object to the
21 proposed distribution terminates if the beneficiary does not
22 notify the trustee of an objection within thirty days after the
23 proposal was sent, but only if the proposal informed the
24 beneficiary of the right to object and of the time allowed for
25 objection.

1 B. Upon the occurrence of an event terminating or
2 partially terminating a trust, the trustee shall proceed
3 expeditiously to distribute the trust property to the persons
4 entitled to it, subject to the right of the trustee to retain a
5 reasonable reserve for the payment of debts, expenses and
6 taxes.

7 C. A release by a beneficiary of a trustee from
8 liability for breach of trust is invalid to the extent:

9 (1) it was induced by improper conduct of the
10 trustee; or

11 (2) the beneficiary, at the time of the
12 release, did not know of the beneficiary's rights or of the
13 material facts relating to the breach.

14 ARTICLE 9 is reserved.

15 ARTICLE 10

16 LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH
17 TRUSTEES

18 Section 10-1001. BREACH OF TRUST.--A violation by a
19 trustee of a duty the trustee owes to a beneficiary is a breach
20 of trust.

21 Section 10-1002. DAMAGES FOR BREACH OF TRUST.--If more
22 than one trustee is liable to the beneficiaries for a breach of
23 trust, a trustee is entitled to contribution from the other
24 trustee or trustees. A trustee is not entitled to contribution
25 if the trustee was substantially more at fault than another

. 144858. 1

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1 trustee or if the trustee committed the breach of trust in bad
2 faith or with reckless indifference to the purposes of the
3 trust or the interests of the beneficiaries. A trustee who
4 received a benefit from the breach of trust is not entitled to
5 contribution from another trustee to the extent of the benefit
6 received.

7 Section 10- 1003. DAMAGES IN ABSENCE OF BREACH. --

8 A. A trustee is accountable to an affected
9 beneficiary for any profit made by the trustee arising from the
10 administration of the trust, even absent a breach of trust.

11 B. Absent a breach of trust, a trustee is not
12 liable to a beneficiary for a loss or depreciation in the value
13 of trust property or for not having made a profit.

14 Section 10- 1004. ATTORNEY FEES AND COSTS. -- In a judicial
15 proceeding involving the administration of a trust, the court,
16 as justice and equity may require, may award costs and
17 expenses, including reasonable attorney fees, to any party, to
18 be paid by another party or from the trust that is the subject
19 of the controversy.

20 Section 10- 1005. RELIANCE ON TRUST INSTRUMENT. -- A trustee
21 who acts in reasonable reliance on the terms of the trust as
22 expressed in the trust instrument is not liable to a
23 beneficiary for a breach of trust to the extent the breach
24 resulted from the reliance.

25 Section 10- 1006. EVENT AFFECTING ADMINISTRATION OR

1 DISTRIBUTION. -- If the happening of an event, including
2 marriage, divorce, performance of educational requirements or
3 death, affects the administration or distribution of a trust, a
4 trustee who has exercised reasonable care to ascertain the
5 happening of the event is not liable for a loss resulting from
6 the trustee's lack of knowledge.

7 Section 10-1007. EXCULPATION OF TRUSTEE. --

8 A. A term of a trust relieving a trustee of
9 liability for breach of trust is unenforceable to the extent
10 that it:

11 (1) relieves the trustee of liability for
12 breach of trust committed in bad faith or with reckless
13 indifference to the purposes of the trust or the interests of
14 the beneficiaries; or

15 (2) was inserted as the result of an abuse by
16 the trustee of a fiduciary or confidential relationship to the
17 settlor.

18 B. An exculpatory term drafted or caused to be
19 drafted by the trustee is invalid as an abuse of a fiduciary or
20 confidential relationship unless the trustee proves that the
21 exculpatory term is fair under the circumstances and that its
22 existence and contents were adequately communicated to the
23 settlor.

24 Section 10-1008. BENEFICIARY'S CONSENT, RELEASE OR
25 RATIFICATION. -- A trustee is not liable to a beneficiary for

. 144858. 1

1 breach of trust if the beneficiary consented to the conduct
2 constituting the breach, released the trustee from liability
3 for the breach or ratified the transaction constituting the
4 breach, unless:

5 A. the consent, release or ratification of the
6 beneficiary was induced by improper conduct of the trustee; or

7 B. at the time of the consent, release or
8 ratification, the beneficiary did not know of the beneficiary's
9 rights or of the material facts relating to the breach.

10 Section 10-1009. LIMITATION ON PERSONAL LIABILITY OF
11 TRUSTEE. --

12 A. Except as otherwise provided in the contract, a
13 trustee is not personally liable on a contract properly entered
14 into in the trustee's fiduciary capacity in the course of
15 administering the trust if the trustee in the contract
16 disclosed the fiduciary capacity.

17 B. A trustee is personally liable for torts
18 committed in the course of administering a trust, or for
19 obligations arising from ownership or control of trust
20 property, including liability for violation of environmental
21 law, only if the trustee is personally at fault.

22 C. A claim based on a contract entered into by a
23 trustee in the trustee's fiduciary capacity, on an obligation
24 arising from ownership or control of trust property, or on a
25 tort committed in the course of administering a trust, may be

1 asserted in a judicial proceeding against the trustee in the
2 trustee's fiduciary capacity, whether or not the trustee is
3 personally liable for the claim.

4 Section 10-1010 is reserved.

5 Section 10-1011. PROTECTION OF PERSON DEALING WITH
6 TRUSTEE. --

7 A. A person other than a beneficiary who in good
8 faith assists a trustee, or who in good faith and for value
9 deals with a trustee, without knowledge that the trustee is
10 exceeding or improperly exercising the trustee's powers is
11 protected from liability as if the trustee properly exercised
12 the power.

13 B. A person other than a beneficiary who in good
14 faith deals with a trustee is not required to inquire into the
15 extent of the trustee's powers or the propriety of their
16 exercise.

17 C. A person who in good faith delivers assets to a
18 trustee need not ensure their proper application.

19 D. A person other than a beneficiary who in good
20 faith assists a former trustee, or who in good faith and for
21 value deals with a former trustee, without knowledge that the
22 trusteeship has terminated, is protected from liability as if
23 the former trustee were still a trustee.

24 E. Comparable protective provisions of other laws
25 relating to commercial transactions or transfer of securities

. 144858. 1

1 by fiduciaries prevail over the protection provided by this
2 section.

3 Section 10- 1012. CERTIFICATION OF TRUST. --

4 A. Instead of furnishing a copy of the trust
5 instrument to a person other than a beneficiary, the trustee
6 may furnish to the person a certification of trust containing
7 the following information:

8 (1) that the trust exists and the date the
9 trust instrument was executed;

10 (2) the identity of the settlor;

11 (3) the identity and address of the currently
12 acting trustee;

13 (4) the powers of the trustee;

14 (5) the revocability or irrevocability of the
15 trust and the identity of any person holding a power to revoke
16 the trust;

17 (6) the authority of co-trustees to sign or
18 otherwise authenticate and whether all or less than all are
19 required in order to exercise powers of the trustee;

20 (7) the trust's taxpayer identification
21 number;

22 (8) the manner of taking title to trust
23 property; and

24 (9) if an action is to be undertaken through
25 an agent, that delegation of the action to an agent is not

1 prohibited by the trust instrument.

2 B. A certification of trust may be signed or
3 otherwise authenticated by any trustee. The recipient of a
4 certification of trust that will be used to affect title to
5 real property may require the certification to be acknowledged
6 by a trustee so as to allow it to be recorded.

7 C. A certification of trust must state that the
8 trust has not been revoked, modified or amended in any manner
9 that would cause the representations contained in the
10 certification of trust to be incorrect.

11 D. A certification of trust need not contain the
12 dispositive terms of a trust.

13 E. A recipient of a certification of trust may
14 require the trustee to furnish copies of those excerpts from
15 the original trust instrument and later amendments that
16 designate the trustee and confer upon the trustee the power to
17 act in the pending transaction.

18 F. A person who acts in reliance upon a
19 certification of trust without knowledge that the
20 representations contained therein are incorrect is not liable
21 to any person for so acting and may assume without inquiry the
22 existence of the facts contained in the certification.
23 Knowledge of the terms of the trust may not be inferred solely
24 from the fact that a copy of all or part of the trust
25 instrument is held by the person relying upon the

. 144858. 1

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1 certification.

2 G. A person who in good faith enters into a
3 transaction in reliance upon a certification of trust may
4 enforce the transaction against the trust property as if the
5 representations contained in the certification were correct.

6 H. A person making a demand for the trust
7 instrument in addition to a certification of trust or excerpts
8 is liable for damages if the court determines that the person
9 did not act in good faith in demanding the trust instrument.

10 I. This section does not limit the right of a
11 person to obtain a copy of the trust instrument in a judicial
12 proceeding concerning the trust.

13 ARTICLE 11

14 MISCELLANEOUS PROVISIONS

15 Section 11-1101. UNIFORMITY OF APPLICATION AND
16 CONSTRUCTION.--In applying and construing the Uniform Trust
17 Code, consideration shall be given to the need to promote
18 uniformity of the law with respect to its subject matter among
19 states that enact it.

20 Section 11-1102. ELECTRONIC RECORDS AND SIGNATURES.--The
21 provisions of the Uniform Trust Code governing the legal
22 effect, validity or enforceability of electronic records or
23 electronic signatures, and of contracts formed or performed
24 with the use of such records or signatures, conform to the
25 requirements of Section 102 of the federal Electronic

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1 Signatures in Global and National Commerce Act and supersede,
2 modify and limit the requirements of the federal Electronic
3 Signatures in Global and National Commerce Act.

4 Section 11-1103. SEVERABILITY. -- If any provision of the
5 Uniform Trust Code or its application to any person or
6 circumstances is held invalid, the invalidity does not affect
7 other provisions or applications of that code which can be
8 given effect without the invalid provision or application, and
9 to this end the provisions of the code are severable.

10 Section 11-1104. APPLICATION TO EXISTING RELATIONSHIPS. --

11 A. Except as otherwise provided in the Uniform
12 Trust Code, on the effective date of the Uniform Trust Code:

13 (1) the Uniform Trust Code applies to all
14 trusts created before, on or after its effective date;

15 (2) the Uniform Trust Code applies to all
16 judicial proceedings concerning trusts commenced on or after
17 its effective date;

18 (3) the Uniform Trust Code applies to judicial
19 proceedings concerning trusts commenced before its effective
20 date, unless the court finds that application of a particular
21 provision of the Uniform Trust Code would substantially
22 interfere with the effective conduct of the judicial
23 proceedings or prejudice the rights of the parties, in which
24 case the particular provision of the Uniform Trust Code does
25 not apply and the superseded law applies;

. 144858. 1

1 (4) any rule of construction or presumption
2 provided in the Uniform Trust Code applies to trust instruments
3 executed before the effective date of the Uniform Trust Code
4 unless there is a clear indication of a contrary intent in the
5 terms of the trust; and

6 (5) an act done before the effective date of
7 the Uniform Trust Code is not affected by the Uniform Trust
8 Code.

9 B. If a right is acquired, extinguished or barred
10 upon the expiration of a prescribed period that has commenced
11 to run under any other statute before the effective date of the
12 Uniform Trust Code, that statute continues to apply to the
13 right even if it has been repealed or superseded.

14 C. The Uniform Trust Code does not apply to the
15 trust created by the Enabling Act for New Mexico of June 20,
16 1910, 36 Stat. 557, Ch. 310.

17 Section 11-1105. REPEAL. -- Sections 45-7-101 through
18 45-7-104, 45-7-201 through 45-7-401 and 46-2-1 through 46-2-19
19 NMSA 1978 (being Laws 1975, Chapter 257, Sections 7-101 through
20 7-104, 7-201 through 7-206, 7-301 through 7-307 and 7-401; Laws
21 1951, Chapter 193, Sections 1 through 3; Laws 1995, Chapter
22 190, Section 2; Laws 1951, Chapter 193, Section 5; Laws 1995,
23 Chapter 190, Section 3; Laws 1951, Chapter 193, Sections 7
24 through 11 and 15 through 22, as amended) are repealed.

25 Section 11-1106. EFFECTIVE DATE. -- The effective date of

1 the provisions of this act is July 1, 2003.

2 - 69 -

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